IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 876 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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PUSHPABEN MAGANBHAI CHAVDA - Applicant
Versus
MULCHANDBHAI SHANKERBHAI RATHOD AND ANOTHER – Opponents

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Appearance :
MS SHALINI S MAIR for Applicant.
MR PINAKIN M RAVAL for Opponent No. 1.
MS NANDINI JOSHI, ADDITIONAL PUBLIC PROSECUTOR for Opponent No. 2

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 03/05/2006

ORAL JUDGMENT

1. RULE. Mr. Pinakin R. Raval, learned Advocate for opponent No. 1 and Ms. Nandini Joshi, learned Additional Public Prosecutor for opponent No. 2 – State waive service on behalf of their respective parties.

2. Heard Ms. Shalini S. Nair, learned Advocate for the applicant and the learned Advocates for the opponents. By preferring this Revision Application, the learned Advocate for the applicant has challenged the order passed by the learned Judicial Magistrate (First Class), Gandhinagar, produced at Annexure-A. It is submitted by the learned Advocate that the learned Magistrate has dismissed the complaint under Section 203 of the Code of Criminal Procedure on 01-10-2005. Before passing the said order, the learned Magistrate has, by order dated 28-03-2004 passed below Exh. 1, issued the process under Section 204 of the Code of Criminal Procedure. The learned Advocate submitted that after issuance of process under Section 204 of the Code of Criminal Procedure, the order of dismissal of the complaint under Section 203 cannot be passed and, therefore, order passed by the learned Magistrate dismissing the complaint dated 01-10-2005 under Section 203 be quashed and set aside.

3. Mr. Pinakin Rawal, learned Advocate for opponent No. 1, has submitted that the learned Magistrate has, after taking into consideration the provisions of Section

203 of the Code of Criminal Procedure, passed the order dismissing the complaint. The learned Advocate for the applicant further submitted that the Magistrate has passed the reasoned order and, therefore, the same cannot be interfered with a revision preferred under Section 397 read with Section 401 of the Code of Criminal Procedure and, therefore, the revision is liable to be rejected.

4. On perusal of the averments made in the application, and, the order produced at Annexure-A as well as the order passed below Exh. 1, it becomes clear that the learned Magistrate issued the process under Section 204 of the Code of Criminal Procedure and that fact is reflected in the order passed below Exh. 1 and subsequently, by order dated 01-10-2005 dismissed the complaint under Section 203 of the Code of Criminal Procedure. On bare perusal of Sections 203 and 204, it becomes clear that, if, after considering the statement on oath of the complainant and of the witnesses and the result of inquiry or investigation, if any, under Section 202, the Magistrate is of the opinion that there is no sufficient ground for proceeding then, he may dismiss the complaint, and in every such case, he shall briefly record his reasons for so doing. Section 204 is with

regard to issuance of process. It is stated therein that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be -

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or if he has no jurisdiction himself some other Magistrate having jurisdiction.

Thus, on perusal of both the sections, it is clear that the learned Magistrate issued the process under Section 204 of the Code and subsequently, after issuing the process, without proceeding further in the matter, dismissed the complaint under Section 203 of the Code and, therefore, the order passed by the learned Magistrate at Annexure-A, dismissing the complaint after issuance of summons of process, requires to be quashed and set aside.

5. For the foregoing discussion, the Criminal Revision Application is allowed. The order dated 01-10-2005 passed by the learned Judicial Magistrate (First Class), Gandhinagar is hereby quashed and set aside. Rule is made absolute.

[H. B. ANTANI, J.]

/shamnath